IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 147 of 2000

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

H L RATHOD

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Revision Application No. 147 of 2000

MR TS NANAVATY for Petitioner No. 1

MR LR PUJARI APP for Respondent No. 1

Respondent No. 2 in person.

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 05/12/2001

06/12/2001

ORAL JUDGEMENT

Heard the learned advocates and the respondent No.2 - Shri Akshay B. Singh Gadhvi.

2. This revision application preferred under Section 397 read with Section 401 CrPC arises from the judgment

and order dated 21st January, 2000, passed by the learned Additional Sessions Judge, Surat in Criminal Revision Application No.51/99.

3. The respondent No.2 herein has lodged complaint No.7276/96, in the Court of learned Chief Judicial Magistrate, Surat, renumbered as Criminal case No.3086/98. On perusal of the complaint it appears that the complainant had some altercation with his neighbours which resulted into physical assault. When the complainant went to the police station for lodging complaint against the said neighbours are police officers present there did not register the complaint of the complainant and instead started beating him, kept him in the lockup and tortured him. The police officers referred to by the complainant are one Police Sub Inspector Shri Solanki and the Police constable. The complainant has also referred to the Police Inspector Shri Rathod, the petitioner, who according to the complainant was present in the police station at the relevant time. It is alleged that the Police Inspector Rathod, the present petitioner, and the other police officers conspired with one another and the other accused to subdue the complainant and to pressurize him into withdrawing the complaint previously lodged by the complainant against one Kamlesh Desai. The petitioner is therefore, arraigned as accused No.9 in the said complaint. The petitioner is alleged to have committed offences punishable under Sections 323, 504, 506, 341, 342 and 114 I.P.C. Pursuant to the said complaint, process has been ordered to be issued against the petitioner also. The petitioner filed application Exh.90 contending therein that the petitioner being a Police Inspector, no cognizance could have been taken of the offence alleged to have been committed by the petitioner in discharge of his duties without the previous sanction of the State Government as envisaged under Section 197 (2) CrPC. The said application Exh.90 made by the petitioner was allowed by the learned Magistrate under his judgment and order dated 3rd April, 1999. Feeling aggrieved, the respondent No.2 preferred Criminal Revision Application No.51/99 before the learned Additional Sessions Judge, Surat. The learned Judge was pleased to allow the said revision application under his judgement and order dated 21st January, 2000. Feeling aggrieved, the petitioner has preferred the present revision application.

4. Mr.Nanavaty has submitted that the only allegation made against the petitioner is that of not recording the complaint intended to be lodged by the

respondent No.2. The said act of omission can be said to have been done in the discharge of duty. For any such act of omission no cognizance of the offence could have been taken by the learned Magistrate, without the previous sanction of the State Government as envisaged under Section 197 (2) read with Section 197 (3) Cr.P.C. In support of his arguments he has relied upon the judgement of this Court in the matter of Bhikhaji Vaghaji v. L.K. Barot and Ors. (1981 G.L.R. 956) and of the Hon'ble Supreme Court in the matter of Suresh Kumar Bhikamchand Jain v. Pandey Ajay Bhushan and Ors. (1998 (1) S.C.C. 205) and in the matter of Abdul Wahab Ansari v. State of Bihar and Anr. ((2000 (7) Supreme Court 177). In the matter of Bhikhaji Vaghaji (supra), the Division Bench of this Court had an occasion to consider whether Section 197 CrPC shall apply to the Police Inspectors also. The Court has held that a Police Inspector can be dismissed or removed from his office by the Inspector General of Police. Sub-section 1 of the said Section 197, therefore, shall not be attracted. However, the State Government has, in exercise of the powers conferred under Sub-section 3 of the said Section 197, issued notification on 15th May, 1974 directing, inter-alia that,

" The provision of Sub-section 2 of the said Section (i.e. Section 197 CrPC) shall apply to the Police officers as defined in Clause (11) of Section 2 of the Bombay Police Act, 1951 (Bombay XXII of 1951) charged with the maintenance of public order".

The Court having considered the effect of the said Notification has held;

"Once a notification under Sub-section (3) of Section 197 of the Code is issued, the provisions of Section 197 (2) are attracted. The said Sub-section (2) would then, for the purpose of such class or category of the members of such Force, would be required to be read as follows:-

"No Court shall take cognizance of any offence alleged to have been committed by any Police Officer as defined by Clause (11) of Section 2 of the Bombay Police Act while acting or purporting to act in the discharge of his official duty, except with the previous sanction of the State Government."

5. In the matter of Suresh Kumar Bhikamchand Jain

(supra), the Hon'ble Supreme Court has held that the plea of want of sanction under Section 197 CrPC can be raised at any time. The accused is not required to wait till framing of the charges or cross-examination of prosecution witnesses. The same view has been expressed by the Hon'ble Supreme Court in the matter of Abdul Wahab Ansari (supra). The Court further held that,

> "In the matter of grant of sanction under Section 197 CrPC the offence alleged to have been committed by the accused must have something to do, or must be related in same manner with the discharge of official duty. In other words, there must be a reasonable connection between the act and the discharge of the official duty".

6. The respondent No.2 has contested the Revision Application. He has strenuously urged that it was the petitioner and the other police officers who had conspired to subdue respondent No.2 - complainant. It was at the instance of the petitioner that the respondent No.2 was badly beaten and tortured. The petitioner has thus committed offence which cannot be said to have been committed in discharge of his duties since no police officer is authorized to beat or torture the complainant. He has further submitted that in any view of the matter the petitioner being a police Inspector, he can be removed/dismissed from the service without the approval of the State Government. The previous sanction of the State Government as envisaged under Section 197 (1) CrPC for taking the cognizance of offence against the petitioner is, therefore, not required. The cognizance of the offence taken by the Magistrate, against the petitioner is legal and proper and requires to be sustained.

7. The arguments advanced by the respondent No.2 cannot be countenanced. In view of the Division Bench judgment in the matter of Bhikhaji Vaghaji (supra), the question is set at rest. It is not under Section 197 (1) CrPC but under Section 197 (2) CrPC the previous sanction would be required for taking cognizance of offence against the petitioner - the Police officer charged with the maintenance of public order. The question that arises is whether the alleged acts of omission and commission had been done by the petitioner in discharge of duties or not. As stated in the complaint, at the relevant time the petitioner was present in the police station, but did not record the complaint lodged by the petitioner, instead he directed the petitioner to the police station officer to give his complaint. Thus

evidently, the act of omission alleged against the petitioner can be said to have been committed in the discharge of duties. There is no allegations that the petitioner had beaten or tortured or kept the complainant in unlawful confinement in the police station.

8. In above view of the matter, in absence of the previous sanction of the State Government as envisaged under Section 197 (2) CrPC the learned Magistrate was right in quashing the process issued against the petitioner and discharging him of the offence registered against him.

9. For the aforesaid reasons, the Revision Application is allowed. The Judgment and order dated 21st January, 2000 passed by the learned Additional Sessions Judge, Surat in Criminal Case No.51/99 is quashed and set aside. The order dated 3rd April, 1999 made by the learned Chief Judicial Magistrate, Surat below application Exh.9 in Criminal Complaint No.7276/96; renumbered as Criminal Case No.3086/98 is restored. Rule is made absolute in the above terms. Ad-interim order stands vacated.

(Ms.R.M. Doshit, J.)

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